

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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TOMMIE LEE MCDOWELL, JR.,

Case No. 3:19-cv-00230-MMD-WGC

Plaintiff,

ORDER

v.

WILLIAM REUBART, *et al.*,

Defendants.

*Pro se* Plaintiff Tommie Lee McDowell, Jr. brings this action under 42 U.S.C. § 1983. Before the Court is the Report and Recommendation (“R&R” or “Recommendation”) of United States Magistrate Judge William G. Cobb (ECF No. 106), recommending the Court deny Plaintiff’s motion (ECF No. 93) and dismiss Frederick Hammel without prejudice under Federal Rule of Civil Procedure 4(m). Plaintiff had until April 19, 2021 to file an objection. (ECF No. 106.) To date, no objection to the R&R has been filed. Also before the Court is the Court’s notice of its intent to dismiss Ward under Rule 4(m), which warned that the Court would dismiss Ward without prejudice if it did not receive proper proof of service of Ward by April 11, 2021. (ECF No. 97.) That date has passed, and the docket does not reflect that Plaintiff properly served Ward. For these reasons, and as further explained below, the Court adopts the R&R, will deny Plaintiff’s motion (ECF No. 93), and will dismiss both Frederick Hammel and Ward from this case, without prejudice, under Rule 4(m).

The Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party fails to object to a magistrate judge’s recommendation, the Court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114,

1 1116 (9th Cir. 2003) (“De novo review of the magistrate judges’ findings and  
2 recommendations is required if, but *only* if, one or both parties file objections to the  
3 findings and recommendations.”) (emphasis in original); Fed. R. Civ. P. 72, Advisory  
4 Committee Notes (1983) (providing that the Court “need only satisfy itself that there is no  
5 clear error on the face of the record in order to accept the recommendation.”).

6 Because there is no objection, the Court need not conduct de novo review, and is  
7 satisfied Judge Cobb did not clearly err in the R&R. Here, Judge Cobb recommends  
8 denying Plaintiff’s motion and dismissing Hammel under Rule 4(m) because Plaintiff  
9 never served him, Rule 4(i) does not govern service of state employees, and Hammel  
10 cannot be properly substituted in pursuant to Rule 25 under these circumstances. (ECF  
11 No. 106 at 2-4.) The Court agrees with Judge Cobb. Having reviewed the R&R and the  
12 record in this case, the Court will adopt the R&R in full.

13 It is therefore ordered that Judge Cobb’s Report and Recommendation (ECF No.  
14 106) is accepted and adopted in full.

15 It is further ordered that Plaintiff’s motion (ECF No. 93) is denied.

16 It is further ordered that both Frederick Hammel and Ward are dismissed from this  
17 case, without prejudice, under Rule 4(m).

18 DATED THIS 20<sup>th</sup> Day of April 2021.

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MIRANDA M. DU  
22 CHIEF UNITED STATES DISTRICT JUDGE  
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